

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

290-1

There are three types of overissuance claims: (1) inadvertent household error claims; (2) administrative error claims; and (3) intentional program violation claims. (§63-801.2)

290-1A

Federal regulations differentiate between intentional program violation (IPV), inadvertent household error (IHE) and administrative error (AE) claims as follows:

1. An IPV claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in 7 Code of Federal Regulations (CFR) §273.16.
2. An IHE claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.
3. An AE claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card.

(7 CFR §273.18(b))

290-1B

State regulations define an "Administrative (Agency) Error" as "an overpayment [sic] claim caused by an action or a failure to take action by the county agency. (§63-102(a)(3), effective August 10, 2001)

290-1C

State regulations define an "Inadvertent Household Error (IHE)" as "any claim for an [FS] overpayment resulting from an unintentional error on the part of the household." (§63-102(i)(5), effective August 10, 2001)

290-1D

State regulations have established a "delinquent claim". That is either an FS claim which has not been paid by the due date and no satisfactory payment arrangement has been made, or the payment arrangement has been made and a scheduled payment has not been made by the due date. (§63-102(d)(3), effective August 10, 2001; see also §63-801.451)

290-1E

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

State regulations have established an FS "recipient claim", which is "an amount owed because benefits were overissued or benefits were trafficked." (§63-102(r)(1), effective August 10, 2001)

290-2

FS program policy, in regards to the monthly reporting household which fails to submit a complete CA 7, is as follows:

If the household fails to provide a CA 7 (now CW 7 or SAWS 7) or provides an incomplete CA 7 and the County Welfare Department (CWD) fails to take appropriate action, whether or not an FS overissuance exists is determined as follows:

- o No CA 7 or an incomplete CA 7 and the CWD fails to discontinue after providing appropriate notice as specified in §63-504.27--an administrative error claim shall be established for the entire allotment issued in the corresponding issuance month.
- o No CA 7 or an incomplete CA 7 and the CWD fails to provide appropriate notice as specified in §63-504.27--- the CWD must evaluate the household's circumstances for the budget month for which a complete CA 7 was not received. An administrative error claim shall be established only if the household received more benefits than it would have received if the CA 7 had been timely submitted. If this evaluation shows that the household actually received fewer benefits than it should have, the CWD shall restore the lost benefits.
- o A complete CA 7 later found to be incomplete because the household failed to report information, such as income--an inadvertent household error claim shall be established for the difference between the allotment the household received and the allotment the household would have received if the information had been timely reported.

(FS Question and Answer Distribution System (FSQUAD) Number 801-3)

290-3

In *Saldivar v. McMahon*, the federal district court ordered the CDSS to provide timely notice of adverse action prior to reducing or terminating benefits, regardless when the monthly income report is submitted.

As part of the implementation of the court order, the CDSS notified the counties that when a monthly income report was filed late or incomplete, and the recipient submitted a complete CA 7 by the extended filing date, the counties "must not establish a claim against the [Food Stamp] household as long as a complete CA 7 is submitted by the extended filing date."

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

(*Saldivar v. McMahon*, U.S. District, N.D. Cal., Case No. C-83-4637, December 9, 1983; All-County Information Notice No. I-62-89, September 5, 1989)

291-1

Generally, the county shall restore to the household benefits which were lost whenever the loss was caused by an administrative error. (§63-802.1)

291-2

If a claim against the household is unpaid, suspended, or terminated as provided in §63-801.5, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household.

This offset shall not be applied against an initial allotment, even if the initial allotment is paid retroactively. (§63-802.54)

291-3

An underissuance is the amount by which the allotment which the FS household was entitled to receive exceeds the allotment which the household received. (§63-102(u)(1))

291-4

Vendor payments for child care made by the CalWORKs program or by the California Department of Education are not considered income to the household and cannot be used as a child care deduction.

An expense which is covered (i.e., either already paid and reimbursed, or anticipated to be reimbursed) by an excludable reimbursement payment or vendor payment (§63-502.2(b)(2)) is not a deductible expense. However, if the child care payment is not reimbursed, or reimbursed only in part, the out-of-pocket expense is deductible per §§63-502.34 and 63-1101.2, up to the allowable maximum. Counties must recalculate the FS allotment and issue any applicable benefit supplement in the current month, or restore lost benefits.

(All-County Letter No. 98-19, March 17, 1998)

291-5 ADDED 2/04

If the county determines that the assistance unit/household received an underpayment/underissuance due to county error, the county must take action to restore those benefits. Restoration is based on QR rules. The county may not use actual verified income to reconcile against prospectively budgeted income that was used in the benefit calculation as income that was “reasonably anticipated” at the time benefits were calculated.

As an example, in CalWORKs an underpayment should be provided for an assistance unit for any pregnant/parenting teen who had previously been aided as a dependent child and who had a break in aid between being aided in their parent/caretaker relative's assistance unit and establishing her own assistance unit. (All-County Letter No. 03-18, April 29, 2003, p.73)

291-5A ADDED 2/04

No overpayment/overissuance or underpayment/underissuance shall be assessed when actual income received during the quarter differs from the amount of income reasonably anticipated, as long as the recipient met his/her reporting responsibilities. No reconciling based on actual income is done if reporting requirements are met accurately and completely and the county averaged and issued benefits based on reasonably anticipated income.

Reconciling beginning months of CalWORKs to determine the correct grant amount does not apply in QR/PB rules. (All-County Letter No. 03-18, April 29, 2003, p.74)

292-1

The general rule is that the county is required to establish a claim against any household that has received more benefits than it was entitled to receive. All adult household members are jointly and individually liable for any overissuance to the household. (§63-801.1)

292-1A

No claim shall be established against a household for an administrative error overissuance which is \$35 or less; or when the county failed to ensure that the household signed the application form, completed a current work registration form, or was certified in the correct county; or when the household transacted an unaltered expired authorization document. (§63-801.12; 7 Code of Federal Regulations §273.18(b)(3))

292-1B

Federal regulations provide that "each person who was an adult member [emphasis added] of the household when the overpayment or trafficking occurred" is responsible for paying back an FS overissuance. Other persons who must repay an overissuance are the sponsor of an alien household member if the sponsor is at fault, or a person connected to the household (such as an authorized representative) who actually trafficks, or causes an overissuance. (7 Code of Federal Regulations (CFR §273.18(a)(4), as revised effective August 1, 2001)

In California, SSI recipients (and certain other specified persons) are not eligible to participate as "a member" of any FS household. (7 CFR §§273.20 and 273.1(a)(7)(ii))

292-1C

Federal regulations provide that "each person who was an adult member of the household when the overpayment or trafficking occurred" is responsible for paying back an FS overissuance. Other persons who must repay an overissuance are the sponsor of an alien household member if the sponsor is at fault, or a person connected to the household (such as an authorized representative) who actually trafficks, or causes an overissuance. (7 Code of Federal Regulations (CFR §273.18(a)(4), as revised effective August 1, 2001)

The following persons are not eligible to participate as a member of any FS household.

- (1) Ineligible aliens and students in 7 CFR §§273.4 and .5.
- (2) SSI recipients in California.
- (3) Individuals disqualified with the work requirements of 7 CFR §273.7.
- (4) Individuals against whom a sanction was imposed for failure to comply with a workfare requirement, as set forth in 7 CFR §273.22.
- (5) Individuals disqualified for failure to provide a Social Security Number, as set forth in 7 CFR §273.6.
- (6) Individuals disqualified for an Intentional Program Violation under 7 CFR §273.16.
- (7) Residents of certain institutions.

(7 CFR §273.1(a)(7))

292-2

An overissuance is the amount by which coupons issued to a household exceed the amount the household was eligible to receive. (§63-102(o)(1))

292-3

After calculating the amount of the inadvertent household or administrative error claim, the county shall offset the amount of the claim against any amounts which have not yet been issued to the household as a restoration of lost benefits in accordance with §63-802.54. The county shall then initiate collection action for the remaining balance, if any. (§63-801.313)

Counties had been instructed not to collect administrative error overissuances by balancing or offsetting them against underissuances by All-County Letters (ACLs) No.

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

96-43, August 27, 1996 and 96-59, October 25, 1996. Effective February 16, 2000, a Handbook Section was added which stated that the CDSS and the counties were permanently enjoined by the court order in *Lopez v. Glickman* [formerly *Lopez v. Espy*] from offsetting administrative error claims against lost FS benefits which had not been restored to the household. (Handbook §63-801.313)

292-4

When an individual has intentionally failed to report earned income, as determined by an administrative disqualification hearing (ADH), a court of appropriate jurisdiction, or by having signed an ADH waiver or a disqualification consent agreement, then the county shall not apply the 20% earned income deduction to that unreported income. (§63-801.323, effective May 1, 1995) Additionally, in inadvertent household and administrative error claims, no 20% earned income deduction shall be allowed for that portion of the earned income which the household failed to report. (§63-801.312(c))

292-5A

When an FS household received a larger allotment than it was entitled to receive, the county shall establish a claim against the household equal to the difference between the benefits received and the benefits which should have been issued.

- (a) For categorically eligible households, a claim shall be determined only when the amount of the overissuance can be calculated on the basis of the household's net income and/or household size.
- (b) When the overissuance occurred in a month or months in which any household member has already performed a Workfare or work component requirement, see §63-407.89.
- (c) When determining the amount of benefits the household should have received, the county shall not apply the 20% earned income deduction to that portion of earned income the household failed to report.

(§63-801.312, as amended by adding (c), effective November 12, 1996)

292-5B

When an FS household received a larger allotment than it was entitled to receive, the county shall establish a claim against the household equal to the difference between the benefits received and the benefits which should have been issued.

- (a) For categorically eligible households, a claim shall be determined only when the amount of the overissuance can be calculated on the basis of the household's net income and/or household size.

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

- (b) When the overissuance occurred in a month or two months in which any household member has already performed a Workfare or work component requirement, see §63-407.89.
- (c) When determining the amount of benefits the household should have received, the county shall not apply the 20% earned income deduction to that portion of earned income the household failed to report.

(§63-801.312, as amended by adding (c), effective November 12, 1996)

State regulations provide that §63-801.312 shall be implemented effective upon filing with the Secretary of State (November 12, 1996) for all new applicants, or at the next recertification, but no later than August 22, 1997, for all FS applicants or recipients. (§63-1434.3)

292-5C

For purposes of §63-801.312(c), the overissuance computation which disallows the 20% earned income deduction for "...earned income the household failed to report", the FS policy interpretation is that the disallowance is to be applied only to that portion of the earnings which is not reported by the extended filing date; and that there is no "good cause" provision which would permit the deduction if the earnings are not reported. (All-County Information Notice (ACIN) No. I-62-96, December 9, 1996)

292-5D

For purposes of §63-801.312(c), the overissuance computation which disallows the 20% earned income deduction for "...earned income the household failed to report," the FS policy interpretation is that the disallowance is to be applied only to that portion of the earnings which is not reported by the extended filing date; and that no "good cause" provision which would permit the deduction if the earnings are not reported. (All-County Information Notice (ACIN) No. I-62-96, December 9, 1996)

State regulations provide that §63-801.312 shall be implemented effective upon filing with the Secretary of State (November 12, 1996 for all new applicants, or at the next recertification, but no later than August 22, 1997 for all FS applicants or recipients. (§63-1434.3)

292-6

A claim shall be handled as an administrative error claim if the overissuance was caused by the action or inaction of any county welfare department (CWD). These claims only apply to categorically eligible households when the calculation of the claim is based on incorrect net income or household size. (§63-801.221)

292-7 ADDED 2/04

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

In the QR/PB system, a CalWORKs overpayment will be established as applicable based on:

- Recipient failure to report accurately and completely;
- County error;
- Recipient late reporting; and
- County inability to issue the correct grant amount due to the 10-day notice requirement when the recipient reported timely, completely and accurately.

Late reporting applies to both a late submission of the QR 7 and to late mandatory mid-quarter reports. The county will establish an overpayment when the recipient received a grant amount to which he/she was not entitled under QR/PB rules regardless of whether the recipient reported timely. (ACL 03-18, April 29, 2003, p.68)

In the food stamp program, an overissuance will be established if the household received an allotment greater than the amount it was entitled to receive under QR/PB rules and was due to recipient failure to report accurately or due to county error. If the recipient reports a mid-quarter change that is required to be reported timely, completely and accurately, the county shall not establish an overissuance due to the 10-day notice requirement.

An overissuance will be assessed when late reporting alone or together with the 10-day notice requirement delayed issuance of the correct amount. An overissuance will be established when a recipient submits a late QR 7 which results in the recipient receiving more food stamps than he/she was entitled to receive because the county could not reduce the food stamps without giving 10-day notice.

(ACL 03-18, April 29, 2003, pp.68-69)

292-7A ADDED 2/04

If a recipient fails to report income any time he/she is required to report, or the county fails to act correctly when a recipient reports income, the county shall determine benefits the recipient would have received based on an accurate report of income and correct county action on that report. The overpayment/overissuance begins on the first date the change would have been made based on an accurate recipient report.

Example: The assistance unit/household has income that exceeded the IRT since January 5, 2002. The assistance unit/household never reported this income and the county discovers this failure to report income. Since the assistance unit/household was required to report this income within 10 days (i.e., by January 15), the assistance unit/household

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

was financially ineligible effective January 31 and the overpayment/overissuance is established effective February 2002.

Example: The assistance unit/household submits a QR 7 on March 5 and reports that dad started a job on February 10 and that the income is expected to continue. The income does not exceed the IRT. The county fails to consider the income in issuing the CalWORKs grant and food stamp allotment beginning in April. If the increased income should have resulted in lower benefits, the county must establish an overpayment/overissuance beginning in April.

(All-County Letter No. 03-18, April 29, 2003, p.70)

292-7B ADDED 2/04

Changes that are not required to be reported, but that may voluntarily be reported should not be considered when determining whether there is an overpayment/overissuance. Voluntary changes need only be reported on the QR 7 that follows the change.

Example: Dad moves back into an assistance unit on January 16. He is employed full time. The assistance unit submits a QR 7 in March for the February report month, but does not report this change on the QR 7 or at any other time. The county discovers in December that dad has been in the home since January. Because there is no deprivation the assistance unit is not eligible for CalWORKs. However, the assistance unit was not required to report dad in the home until it completed the QR 7 in March for the February report month. The first month of overpayment is April.

Example: A recipient assigned to the January-March quarter correctly reports on the QR 7 due in March that the assistance unit/household has not acquired new property since the last QR 7. In April the recipient wins a car but sells it for fair market value in May and spends the money on bills. The recipient reports these facts on the QR 7 due in June. Since the assistance unit/household is property eligible in July-September quarter based on the June QR 7 and was not required to report the property mid-quarter, the county does not establish a property overpayment/overissuance for April-June. (All-County Letter No. 03-18, April 29, 2003, p.71)

292-7C ADDED 2/04

In the QR/PB system, the only time an assistance unit /household is required to report property is on the QR 7. Property related overpayments/overissuances will be determined based on information that should have been reported on the QR 7. An assistance unit/household is only required to report property when property exceeds the limit in the second month of the quarter (i.e., the QR Data Month).

If a recipient owned property that exceeded the resource limit in the second month of the quarter and failed to report it on the QR 7, or if the county failed to act correctly on a report of property that exceeds the limit, the county shall determine the benefits the

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

assistance unit/household should have received. (All-County Letter No. 03-18, April 29, 2003, p.72)

292-7D ADDED 2/04

No overpayment/overissuance or underpayment/underissuance shall be assessed when actual income received during the quarter differs from the amount of income reasonably anticipated, as long as the recipient met his/her reporting responsibilities. No reconciling based on actual income is done if reporting requirements are met accurately and completely and the county averaged and issued benefits based on reasonably anticipated income.

Reconciling beginning months of CalWORKs to determine the correct grant amount does not apply in QR/PB rules. (All-County Letter No. 03-18, April 29, 2003, p.74)

293-2

The county shall take action on inadvertent and administrative error claims for which less than three years have elapsed between the month the overissuance occurred and the month the county determined by computation that an overissuance occurred, irrespective of the date the claim determination was completed. (§63-801.111)

The CDSS interpretation of the three-year time period discussed in §63-801.111 is as follows:

"The three-year time frame does not begin with the date of discovery, the date the case is referred to investigations, or the date the investigative staff uses the information on IEVS and other verifications to calculate the OI. The three-year time frame begins with the date of the occurrence of the OI [Manual of Policies and Procedures (MPP) 63-801.11; ACIN I-03-02]. OI Q&A #1 in ACIN I-03-02 provides an example of how the three-year time frame works. It also explains the six-year calculation time frame."

(All-County Information Notice (ACIN) No. I-52-02, July 22, 2002, Question 1)

293-2A

The county shall calculate the amount of the FS overissuance which occurred during the six years preceding the date the overissuance was discovered. The county shall not include in its calculation any amount of the overissuance which occurred in a month more than six years prior to the date the overissuance was discovered. (§63-801.311(b), as revised effective August 10, 2001)

293-2B

The CDSS issued an All-County Information Notice (ACIN) in which it interpreted the following state regulations:

"The CWD shall not take action on inadvertent household and administrative error claims for which more than three years have elapsed between the month the overissuance occurred and the month the CWD determined by computation that the overissuance occurred irrespective of the date the DFA 842 was complete." (§63-801.112)

"The CWD shall calculate the amount of the overissuance which occurred during the six years preceding the date the overissuance was discovered. The CWD shall not include in its calculations any amount of the overissuance which occurred in a month more than six years prior to the date the overissuance was discovered." (§63-801.311(b))

"QUESTION #1a:

"Is there a difference between establishing and calculating claims (for overissuances)?

"ANSWER:

"Yes. Claims for overissuances (OIs) are "established" by documenting the amount of and the reason for the OI and issuing a demand letter to the client. The date of the demand letter is the date that the claim is established [7 CFR §273.18(e)(3)(iii)]. Computing the amount of an overissuance does not constitute the establishment of an OI claim. Counties must compute the amount of the overissuance and issue the demand letter within the three-year timeframe. If the county does not compute the overissuance until the end of the three-year time period, a claim cannot be considered established against the household."

(ACIN No. I-03-02, January 14, 2002)

293-2C

The CDSS issued an All-County Information Notice (ACIN) in which it interpreted the following state regulations:

"The CWD shall not take action on inadvertent household and administrative error claims for which more than three years have elapsed between the month the overissuance occurred and the month the CWD determined by computation that the overissuance occurred irrespective of the date the DFA 842 was complete." (§63-801.112)

"The CWD shall calculate the amount of the overissuance which occurred during the six years preceding the date the overissuance was discovered. The CWD shall not include in its calculations any amount of the overissuance which occurred in a month more than six years prior to the date the overissuance was discovered." (§63-801.311(b))

"QUESTION #1b:

"Why calculate back six years, but act within three?"

"ANSWER:

"The "three years" is the timeframe for the occurrence, the computation, and to inform the household of the OI. This time frame is to ensure that timely action is taken on any OI. The "six years" timeframe applies in determining the total amount of the OI claim against the household. A claim against the household is equal to the difference between the allotment amount the household received and the allotment amount the household should have received.

"The six years allows the county to possibly collect on a larger amount of the OI. Once a claim is established, there is no time limit, with the exception of §63-801.222 (administrative errors claims being recouped pursuant to *Lomeli v. Saenz*), on collection of overissuances."

Based on the above departmental interpretation, as further explained in ACIN No. I-52-02, it appears that despite §63-801.112, which limits the county action to three years from the "month the overissuance occurred" and the overissuance computation month, the CDSS position is to allow the counties to take action to collect the overissuance for up to six years as long as the overissuance occurred over a six-year period, the last month of which occurred within three years of the overissuance computation. Thus, the CDSS is treating an "overissuance" not as a one-month occurrence for purposes of the above interpretation, but as a continuing action. The CDSS has cited no regulatory authority for this position, nor has it clarified if there is an overissuance five years previously, and then no overissuance for the next four years, whether the county can collect the first overissuance.

(ACIN No. I-03-02, January 14, 2002; ACIN I-52-02, July 22, 2002)

293-3

The county shall be permitted to determine that an FS overissuance claim is uncollectible after it is held in suspense for three years. The county shall use a suspended or terminated claim to offset a restoration of lost benefits in accordance with §63-802.54. (§63-801.53)

293-5

The county shall initiate collection action against any or all of the adult members of a household which received an overissuance. (§63-801.61) If a change in household composition occurs, the county shall initiate collection action which may be taken against any or all households which contain an adult member who was an adult member of the original household that received an overissuance. (§63-801.611; 7 Code of Federal Regulations §273.18(f))

293-6

An FS overissuance claim is considered delinquent if the claim has not been paid by the due date, and a satisfactory payment arrangement has not been made, or the payment arrangement has been made and a scheduled payment has not been made by the due date. (§§63-102(d)(3) and 63-801.451, effective August 10, 2001)

A claim is not considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction, and the county expects to begin collection on that other claim once the prior claim is settled. (§63-801.454)

293-6A

An overissuance claim that has been appealed, or is awaiting a state hearing decision, shall not be considered delinquent. (§63-804.642, effective August 10, 2001)

295-1

The county may not initiate the interception of taxes when the case is eligible for grant adjustment, where the claimant is making regular restitution payments, where the time to request a state hearing regarding the overpayment has not expired, where the individual has requested a state hearing or is awaiting a decision from a state hearing or has received an adopted state hearing decision which determines there is no overpayment or FS overissuance, or where there is a nonfraudulent overpayment or overissuance totaling less than \$35. The county must have a "right of recovery" pursuant to CDSS regulations which existed at the time of the overpayment. Right of recovery is defined as the ability to make collections based on the regulations, subsequent court cases, and any All-County Letters. (All-County Information Notice I-53-89, August 3, 1989)

295-2

All counties participating in the AFDC/FS tax intercept program are required to establish and use a mechanism for promptly (within ten-calendar days after decision has been made to refund money) refunding to the individual monies intercepted for which: (1) a request for intercept has been submitted to the CDSS in error, or (2) a deletion request has been submitted to the CDSS and the intercept has already occurred before the deletion request is processed by the Franchise Tax Board. The refund must not be held until the monies are received from the CDSS. (All-County Information Notice I-53-89, August 3, 1989)

A specific notice must be sent to AFDC and FS recipients who had been overpaid or overissued benefits. This notice must include the county's right to recover the overpayment or overissuance through withholding from the state tax refund.

For tax intercepts in 1989 and thereafter, CDSS shall require the counties to offer an

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

opportunity for an administrative review, at which point the county must determine if it has a right of recovery. If the individual is dissatisfied with the county review, a state hearing may be requested. The scope of that hearing shall be limited to whether tax intercept in the claimant's case is permitted under CDSS' tax intercept instructions. (All-County Welfare Directors Letter No. 90-14, February 9, 1990, implementing the August 22, 1989 Stipulation in *Anderson v. McMahon*)

295-3

Tax intercepts are appropriate when there is a delinquent AFDC (now CalWORKs) overpayment/FS overissuance of at least \$10, and one of the following situations exists:

- .11 The AFDC household has failed to respond to a written demand letter.
- .12 There is a court-ordered restitution of an AFDC overpayment.
- .13 There is a court-ordered restitution of an IPV.
- .14 There is an FS Administrative Disqualification Hearing decision which determined that an IPV occurred.
- .15 The FS household has failed to respond to written demand letters and the claim has not been terminated.

(§20-403.1)

The following cases are not eligible for tax intercepts:

- .21 Cases eligible for AFDC grant adjustment or FS allotment reduction.
- .22 Cases in which the individual is making regular restitution payments.
- .23 Cases in which the time to request a state hearing has not elapsed.
- .24 Cases in which a request for a state hearing has been requested or a decision is pending, or where the decision has determined there is no overpayment/overissuance.
- .25 Nonfraudulent overpayment(s)/overissuance(s) totaling less than \$35.

(§20-403.1, .2)

295-4

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

Counties shall refund excess monies intercepted to the recipient within ten calendar days after the decision has been made to refund money regardless of whether or not the counties have received the intercepted funds. (§20-408.1)

295-5

There are certain criteria which exist in order to intercept State and federal income tax refunds to collect delinquent restitution of AFDC (now CalWORKs) overpayments and FS overissuances. Submission of these claims is voluntary. Specific instructions for tax year 2000 are set forth in Division 20 of the MPP. Attachment 7 of this All-County Information Notice (ACIN) includes a checklist of the All-County Letters (ACLs) to be reviewed prior to submission of cases for tax intercept. These AFDC rules are:

- (1) All cases:
 - A. ACL No. 85-49 (*Edwards v. McMahon*) ensures that all underpayments are set off against existing overpayments.
- (2) Cases involving excess resources:
 - A. ACL No. 87-40 ensures that a good faith review has been performed and that the recipient was notified of the result; that if no review was previously performed the case will be reviewed and the recipient notified of the review, with no intercept pending outcome of the review; that if the overpayment is reduced after review, and the prior collection exceeds the revised amount, the counties shall make corrective payments.
- (3) Cases involving lump-sum payments:
 - A. ACL No. 85-67 (*Stephens v. McMahon; Shaw v. McMahon*) ensures that overpayments were not caused by "windfall" lump-sum payments received between April 2, 1982 and August 1, 1986; and that eligibility under Shaw was considered.
 - B. ACL No. 86-90, 88-76 (*Rutan v. McMahon*) informs counties that no recoupment activity is permitted for overpayments caused by receipt of lump sum income prior to receipt of an adequate notice explaining the lump sum rule.
- (4) Cases involving excess income:
 - A. ACL No. 86-44 (*Noia v. McMahon*) ensures that if overpayments arose from loans considered as income that the instructions in this ACL have been followed (most cases occurring between October 1, 1985 and July 1, 1986).

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

- B. ACL No. 84-93, 85-41 (*Collins v. Woods*) instructs counties not to recoup nonwillful overpayments made prior to April 2, 1982. In any such case, stop recoupment and make corrective payments of all amounts recouped after August 28, 1994.

(5) Technical overpayments:

ACIN I-113-84 requires review of cases to ensure that overpayments did not arise from "technical ineligibility" and that if the case occurred after January 1, 1985, recoupment is stopped and corrective payments made for amounts previously recovered.

(6) Bankruptcy:

ACIN I-65-86 is to be consulted if a bankruptcy has been filed.

In addition, for FS overissuances, ensure that the amount of the claim is determined in accord with §§63-046, 63-801.111, and 63-801.311. Overissuances which were caused by administrative error and which occurred prior to October 1, 1996 may not be submitted (ACIN I-19-98, referencing *Aktar v. Anderson*); nor may Title IV-E (Foster Care) claims. (ACIN I-22-00, March 6, 2000, modifying slightly previous instructions contained in ACIN I-19-98, March 13, 1998; ACIN I-12-97, February 26, 1997; ACIN I-11-95, March 7, 1995; ACIN I-06-94, February 24, 1994 and ACIN I-13-93, March 9, 1993)

296-2

The county shall initiate collection action against the household for all inadvertent or administrative error claims unless the claim is less than \$35 and the claim cannot be recovered by reducing the household's allotment, or the county has documentation that the household or sponsor of an alien household cannot be located. (§63-801.411)

296-3

If any nonparticipating or participating household against whom collection action has been initiated for repayment of an administrative error claim does not respond to the first notice of action requesting repayment, additional notices shall be sent at reasonable intervals, such as 30 days, until the household or sponsor has responded by paying or agreeing to pay the claim, until the criteria for suspending collection action, specified in §63-801.5, have been met, or until the County Welfare Department initiates other collection actions. (§63-801.442)

296-4

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

A claim shall be handled as an Intentional Program Violation (IPV) claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member or the sponsor has committed an IPV. Prior to a determination of IPV, the claim against the household shall be established and handled as an inadvertent household error claim. (§63-801.231)

296-5A

The county shall initiate collection action by sending a Notice of Action (NOA) to the household, or to the sponsor of an alien household, which NOA requests repayment, and includes certain other information. The household or the sponsor shall be informed of the length of time the household has to decide which repayment method it will choose, and that the household must inform the county of its choice. The NOA shall also state that the household's allotment will be reduced if the household fails to agree to make restitution. (§63-801.431(d), effective September 1, 1997)

296-6

An inadvertent or administrative error claim may be suspended when the household is not participating in the FS program, at least one demand letter has been sent, the household cannot be located, or the cost of further collection is likely to exceed the amount that can be recovered. (§63-801.512)

296-7

There are three methods of collecting FS overissuance claims. The first two methods, lump-sum repayment and installment repayment, are optional with the household, regardless of the type of overissuance claim. Under either method, repayment can be made with FS coupons. The third method of collection is by reduction in the current FS allotment of a currently eligible household. If the household does not repay the overissuance claim by either the lump-sum or installment method, then the county's right to implement the coupon reduction method is as follows:

- (a) Intentional Program Violation Claims: The amount of the reduction shall be 20% of the household's monthly allotment or \$20, whichever is the greater amount.
- (b) Inadvertent Household Error or Administrative Error Claims: The amount of the reduction shall be 10% of the household's monthly allotment or \$10, whichever is the greater amount.

(§63-801.7, as modified effective August 10, 2001)

296-7A ADDED 2/04

Recoupment of an overpayment/overissuance will only be initiated at the beginning of a quarter. If the county completes recoupment of one overpayment /overissuance in mid-

SHD Paraphrased Regulations - Food Stamps

290 - 299 Corrective Actions

quarter and wishes to initiate recoupment of another overpayment/overissuance in the following month, the county may begin such recoupment as long as the amount being adjusted does not result in a decrease in benefits mid-quarter. All-County Letter No. 03-18, April 29, 2003, p.76)

296-8

The county is authorized to reduce the household's FS allotment without further notice in order to collect an outstanding nonadministrative error overissuance when collection action has been initiated, the household is currently participating in the program, and the household has not responded to the county's repayment notice within 30 days from the date that the notice was mailed. (§63-801.441)

296-9

The repayment demand notice should contain the following language, in accord with All-County Information Notice (ACIN) No. I-27-90, April 19, 1990, implementing *Louis v. McMahon*: "You do not have to use any Social Security or SSI benefits you get to repay this overpayment."

Although the Order in *Louis v. McMahon* has not been modified, according to the CDSS, the Food and Nutrition Service (FNS) has directed California to change its FS collection notices, to remove the language which states that Social Security does not have to be used to repay the FS overissuance. The FNS position is based on the Debt Collection Improvement Act, which according to the CDSS, authorizes the collection of SSA benefits to repay debts owed to the Federal Government, but exempts the collections from SSI but not SSA. (All-County Information Notice (ACIN) No. I-109-00, November 17, 2000)

296-9A

The FS repayment demand notice should contain the following language, in accord with All-County Information Notice (ACIN) No. I-27-90, April 19, 1990, implementing *Louis v. McMahon*: "You do not have to use any Social Security or SSI benefits you get to repay this overpayment."

According to the CDSS, the Food and Nutrition Service (FNS) has directed California to change its FS collection notices, to remove the language which states that Social Security does not have to be used to repay the FS overissuance. The FNS position is based on the Debt Collection Improvement Act, which according to the CDSS, authorizes the collection of SSA benefits to repay debts owed to the Federal Government, but exempts the collections from SSI but not SSA. (ACIN No. I-109-00, November 17, 2000)

An FS overissuance claim is considered delinquent if the claim has not been paid by the due date, and a satisfactory payment arrangement has not been made, or the payment arrangement has been made and a scheduled payment has not been made by the due date.

(§§63-102(d)(3) and 63-801.451, effective August 10, 2001)

A claim is not considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction, and the county expects to begin collection on that other claim once the prior claim is settled. (§63-801.454)

The Debt Collection Improvement Act of 1996 requires the federal government to withhold or reduce certain federal payments to satisfy delinquent non-tax debts owed to the United States by the payee. This process is known as "administrative offset". The rule is effective January 22, 1999. The rules provide that the offset will be the lesser of the amount of the debt or an amount equal to 15% of the monthly covered benefit payment if the benefit payment exceeds \$750 per month. Federal benefit offset is not allowed for payments issued under the SSI Program, Part B of the Black Lung Benefits Act, and any law administered by the Railroad Retirement Board. Creditor agencies must notify the Fiscal Management Service, a Bureau of the Department of the Treasury, of all past-due, legally enforceable debts that are delinquent for more than 180 days. Before submitting a delinquent debt for collection by offset, creditor agencies are responsible for notifying debtors that their debt is delinquent and that the agency intends to collect the debt by offset. By written notice, the creditor agency must inform debtors of the opportunity to review the applicable agency records and to seek a review of the determination of the debt [emphasis added]. Upon receipt of the notice, the debtor may provide evidence to the creditor agency that collection of the debt by administrative offset would result in a financial hardship and make alternate arrangements, acceptable to the creditor agency, to repay the debt. (63 Federal Register, August 1, 1998 pages 44986 and 44987, and 63 Federal Register, December 23, 1998, page 71204)

296-10

At certification, the county shall identify households that owe outstanding payments on previously established claim determinations. The initial allotment shall not be reduced to offset claims. Actions on identified claims shall be as specified in §63-801.4. (§63-801.97)

296-11

A preliminary injunction had prohibited the CDSS and the counties from using involuntary means to collect FS administrative error overissuances. While the county could request voluntary repayment of the administrative error overissuance, it could not use other means such as administrative collection notices, tax intercepts, or other civil collection methods. (All-County Information Notice (ACIN) I-24-96, April 26, 1996; *Aktar v. Anderson*)

On January 22, 1997, the Court of Appeal lifted the ban on collection of administrative error FS overissuances, based on Public Law 104-193, for all overissuances which occurred on or after September 22, 1996. Administrative error overissuances which

SHD Paraphrased Regulations - Food Stamps 290 - 299 Corrective Actions

occurred prior to October 1, 1996 are still uncollectible unless the household voluntarily agrees to allow recovery. (ACIN I-22-97, April 4, 1997)

296-12

The county shall not collect administrative error FS overissuances by balancing or offsetting them against underissuances.

(All-County Letter (ACL) No. 96-43, August 27, 1996, and ACL No. 96-59, October 25, 1996, implementing *Lopez v. Espy* (1996) 83 F. 3d 1095, name changed to *Lopez v. Glickman*; and court order modifying §63-801.313 set forth in Handbook §63-801.313 effective February 16, 2000)

296-13

When an administrative error FS overissuance has occurred, and the first month of the proposed adjustment from the FS recipient's allotment is to begin on or after March 1, 2000 [emphasis added], then the following rules govern:

- (1) The overissuance shall be recovered by reducing the allotment by 5%, or by \$10, whichever is greater.
- (2) The allotment can be reduced for as many as 36 consecutive calendar months, after which the remaining overissuance is not subject to repayment demand.

(*Lomeli v. Saenz*, Stipulated Judgment, Sacramento County Superior Court, Case No. 98CS01747, filed July 5, 2000; All-County Letter No. 00-59, August 28, 2000)

296-13A

In the *Lomeli v. Saenz* stipulated judgment, the administrative error overissuance could be collected for 36 consecutive calendar months from FS recipients whose first month of allotment adjustment began on March 1, 2000 or thereafter.

The CDSS has clarified that the 36 calendar months, once started, continues to run whether or not the recipient remains on food stamps. Thus, if an FS recipient had allotment reduction under *Lomeli* begin in March 2001, the period for allotment reduction would end in February 2004. At that point, "...regardless of whether or not allotment reductions have been made that entire time, any remaining uncollected balance is to be forgiven or compromised and may not be collected by any other means."

(All-County Letter No. 00-87, December 28, 2000, Questions 5; see also Questions 1, 2, 3, 6, and 10)

296-13B

SHD Paraphrased Regulations - Food Stamps

290 - 299 Corrective Actions

If a *Lomeli* adjustment has begun, and the recipient goes off aid or has benefits suspended, the county may attempt to recover the overissuance using normal collection procedures, as long as the 36-month time limit has not expired, (All-County Letter No. 00-87, December 28, 2000, Questions 7 and 8)

296-13C

Administrative error overissuances established under *Lomeli* should not be collected with any other overissuance at the same time using allotment reduction. Counties should complete collection of any previous overissuance before beginning the *Lomeli* reduction. The 36-month period for collection of *Lomeli* overissuances begins, in this case, when the first *Lomeli* adjustment is made. (All-County Letter No. 00-87, December 28, 2000, Questions 12 and 13)

296-13D

In the FS program, it is the CDSS position that multiple overissuances (i.e., for administrative error, inadvertent household error, or Intentional Program Violation) can be collected at the same time through allotment reduction. In these instances, the county should determine which overissuance allows the maximum allotment reduction, and adjust at that rate, but not more than that rate.

The exception to this general principle is that when there is an administrative error overissuance established pursuant to the *Lomeli v. Saenz* court case, then the *Lomeli* overissuances should be collected separately, and not combined, after the county has completed its other adjustments.

(§63-801.73; All-County Letter No. 00-87, December 28, 2000; All-County Information Notice No. I-124-00, December 28, 2000)

296-13E

Except for claims which are governed by the *Lomeli v. Saenz* stipulated judgment, the federal rule for compromising an overissuance claim, or any portion of that claim, is that if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years, the claim may be compromised. ("Compromised" means that the debt is reduced or forgiven.) Any compromised claim may be used to offset the issuance of other benefits, or may be reinstated if any portion of the compromised claim that was not forgiven becomes delinquent. (7 Code of Federal Regulations (CFR) §273.18(e)(7), as revised effective August 1, 2000)

296-13F

Despite the language agreed to by the CDSS in the *Lomeli v. Saenz* stipulated judgment, in regard to the overissuances which are affected by that judgment, the CDSS has issued the following regulation:

"CDSS does not compromise overissuances with the exception of administrative errors occurring on or after March 1, 2000 [emphasis added]. These administrative error overissuances are automatically compromised and recouped pursuant to the *Lomeli v. Saenz* court case settlement agreement. This agreement stipulates that administrative error overissuances are to be recouped by reducing the monthly allotment by five percent or \$10.00, whichever is greater for up to a total of 36 consecutive calendar months."

The underlined phrase, "occurring on or after March 1, 2000" was changed to "administrative error overissuances in which allotment began on or after March 1, 2000", thereby meeting the terms of the stipulated *Lomeli* judgment. (§63-801.222, as revised effective January 14, 2002)

296-14

Counties shall identify all FS households receiving Social Security benefits through desk reviews, and use new Social Security cost-of-living-adjustments (COLAs) in computing eligibility and allotment level.

Overissuances resulting from misapplying these COLAs (as in the case of the 3.5% COLA payable January 2001) do not result in household liability. But if an underissuance of FS benefits occurs, the household is entitled to a restoration of lost benefits under §63-802.

(§63-504.462(b)(1)(A); All-County Information Notice (ACIN) No. I-105-00, November 2, 2000; ACIN I-91-01)

296-15

Federal regulations preclude States from using additional involuntary collection methods against individuals in an FS household that is already having its benefit reduced, unless the additional payment is voluntary, or the source of the payment is irregular and unexpected, such as a State tax refund or lottery winnings offset. (7 Code of Federal Regulations §273.18(g)(1)(v))

296-16

In a Manual Section entitled "Adverse Actions" there is a general requirement for timely notice to a household prior to reduction or termination of its benefits within a certification period. The next sentence states:

"If a hearing officer determines that a claim exists, the household must be renotified of the claim, and delinquency is based on the due date of the subsequent notice and not the initial pre-hearing demand letter sent to the household."

(§63-504.261, as revised effective August 10, 2001)

297-1

The Court of Appeal determined that Administrative Law Judges (ALJs) had the authority to award interest in conjunction with the issuance of retroactive benefits. (*Knight v. McMahon* (1994) 26 Cal.App. 4th 747)

On August 29, 1996 the California Supreme Court held that Unemployment Insurance ALJs did not have the authority to award interest. The Court held that those ALJs had no such authority. The Court specifically disapproved the *Knight* case, to the extent that it allowed CDSS ALJs to award interest. Thus, CDSS ALJs may no longer authorize interest payments when retroactive aid is ordered, effective September 29, 1996. (*AFL and CIO v. Unemployment Insurance App. Bd.* (1996) 13 Cal. 4th 1017, 56 Cal. Rptr. 2d 109; All-County Information Notice No. I-52-96, September 25, 1996)